

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

TIMOTHY WALSH,

Respondent

v.

CITY OF KANSAS CITY, MISSOURI.

Appellant

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DOCKET NUMBER WD78035

DATE: FEBRUARY 2, 2016

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Appeal From:

Circuit Court of Jackson County, MO  
The Honorable Robert Michael Schieber, Judge

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Appellate Judges:

Division Three  
Karen King Mitchell, P.J., Lisa White Hardwick, and Anthony Rex Gabbert, JJ.

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Attorneys:

Douglas McMillan, Kansas City, MO,

Counsel for Respondent

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Attorneys:

Kirk Holman, Thomas Ralston, Kenneth Kinney, Kansas City, MO

Counsel for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**TIMOTHY WALSH,**

**Respondent,**

**v.**

**CITY OF KANSAS CITY, MISSOURI,**

**Appellant.**

**WD78035**

**Jackson County**

Before Division Three Judges: Karen King Mitchell, P.J., Lisa White Hardwick, and Anthony Rex Gabbert, JJ.

The City of Kansas City, Missouri appeals the circuit court's judgment after a jury awarded compensatory and punitive damages to Respondent Timothy Walsh on his claim of retaliation under the Missouri Human Rights Act ("MHRA"). Walsh's claim alleged that Dan Crabtree, his former supervisor, committed several retaliatory acts against him as a result of his participation in an investigation of Crabtree's purported discrimination against a coworker.

On appeal, the City argued that:

(1) The trial court erred in granting Walsh's motion for partial summary judgment and directing the verdict as to claimed retaliation occurring in May 2011 because there remained questions of material fact concerning Crabtree's knowledge of Walsh's protected activity and whether he had other, non-retaliatory motives for committing the claimed retaliation;

(2) The trial court erred in resubmitting Verdict Form A to the jury because the jury's intent was clearly and unambiguously expressed in the original Form A;

(3) The trial court erred in denying the City's motion for directed verdict because there was insufficient evidence to establish a causal connection between Walsh's protected activity and Crabtree's May 2011 claimed retaliation, and because there was insufficient evidence to show that Walsh suffered damages as a result of the claimed retaliation;

(4) The trial court erred in submitting the issue of punitive damages to the jury because a reasonable juror could not conclude that the City's conduct was outrageous because of evil motive or reckless indifference based on the evidence presented; and

(5) The trial court abused its discretion in granting Walsh's attorney's fees because the fees granted were unreasonable and lacked careful consideration in that it was unreasonable for the trial court to refuse to reduce the amount in proportion to Walsh's success at trial.

## **AFFIRMED**

### **Division Three holds:**

(1) The trial court did not err in granting Walsh's motion for partial summary judgment and directing the verdict as to claimed retaliation occurring in May 2011 because there were no genuinely disputed facts regarding Walsh's May 2011 retaliation claims and the undisputed facts presented by Walsh sufficiently established his retaliation claim against the City. All facts supporting Walsh's May 2011 retaliation claim were admitted to by the City in its Answer and in its response to Walsh summary judgment motion. Additionally, although her testimony was not determinative, the City's designated corporate representative did not deny any of the essential supporting facts in her deposition.

(2) The trial court did not err in resubmitting Verdict Form A to the jury because the original verdict expressed in Verdict Forms A and B was defective in that the forms were not fully responsive to all material issues and the jury was obviously confused as to the discrete purpose and effect of each form. Although the jury's original verdict A did demonstrate a clear intent to find for Walsh on the May 2011 retaliation claim, the questions asked during their deliberations indicated an obvious uncertainty about the relationship between Forms A and B. Additionally, both parties' counsel agreed that resubmitting Forms A and B was the appropriate course of action given the jury's obvious confusion, and the City made no objection to this until after it had received the unfavorable second verdict.

(3) The trial court did not err in denying the City's motion for directed verdict because Walsh established a submissible case of retaliation when he proved that there were no material facts in dispute regarding the fact that he participated in an investigation of alleged discriminatory activity prohibited by Section 213.070, and as a direct result, he was retaliated against by Crabtree and suffered damages in the form of, at the very least, denial of work opportunities

(4) Even assuming, *arguendo*, that Walsh did not make a submissible case for punitive damages, the City did not preserve this point for appeal because it did not raise an objection to

the submissibility of punitive damages in its motions for directed verdict. Accordingly, we do not review this point.

(5) The trial court did not abuse its discretion in granting Walsh's attorney's fees. We presume that the trial court was in a better position to weigh the arguments and the law to the case at hand regarding attorney fees in this case and generally defer to its judgment on this issue. Additionally, we find that the City failed to meet its burden of proving that the court abused its discretion in awarding Walsh's fees.

Opinion by Anthony Rex Gabbert, Judge

Date: 2/2/16

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